UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
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MARYLAND CASUALTY COMPANY

Plaintiff,

ANSWER

v.

Civil Case No. 10-cv-266-A

EFFICIENT SOLUTIONS, INC. and DALE DAHLGREN

Defendants.

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The Defendant Dale Dahlgren, by his attorneys Cellino & Barnes P.C., Ellen B. Sturm, Esq., and Christopher D. D'Amato, Esq. of counsel, answering the Complaint of the Plaintiff Maryland Casualty Company, states as follows:

1. The allegations contained in paragraph 1 of the Plaintiff's complaint are legal conclusions which do not require an answer.

2. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 2 of the Plaintiff's Complaint.

3. Admits the allegations contained in paragraph 3 of the Plaintiff's Complaint.

4. Admits the allegations contained in paragraph 4 of the Plaintiff's Complaint.

5. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 5 of the Plaintiff's Complaint.

6. Admits the allegations contained in paragraph 6 of the Plaintiff's Complaint.

7. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 7 of the Plaintiff's Complaint.

8. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 8 of the Plaintiff's Complaint.

9. The allegations contained in paragraph 9 of the Plaintiff's Complaint are legal conclusions which do not require an answer.

10. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 10 of the Plaintiff's Complaint.

11. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 11 of the Plaintiff's Complaint.

12. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 13 of the Plaintiff's Complaint.

13. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 14 of the Plaintiff's Complaint.

14. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 15 of the Plaintiff's Complaint.

15. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 16 of the Plaintiff's Complaint.

16. Admits the allegations contained in paragraph 17 of the Plaintiff's Complaint.

17. Admits the allegations contained in paragraph 18 of the Plaintiff's Complaint.

18. Admits the allegations contained in paragraph 19 of the Plaintiff's Complaint.

19. Admits the allegations contained in paragraph 20 of the Plaintiff's Complaint.

20. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 21 of the Plaintiff's Complaint.

21. Admits the allegations contained in paragraph 22 of the Plaintiff's Complaint.

22. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 23 of the Plaintiff's Complaint.

23. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 24 of the Plaintiff's Complaint.

24. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 25 of the Plaintiff's Complaint.

25. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 26 of the Plaintiff's Complaint.

26. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 27 of the Plaintiff's Complaint.

27. Admits the allegations contained in paragraph 28 of the Plaintiff's Complaint.

28. Denies the allegations contained in paragraph 29 of the Plaintiff's Complaint.

29. Denies the allegations contained in paragraph 30 of the Plaintiff's Complaint.

30. Denies the allegations contained in paragraph 31 of the Plaintiff's Complaint.

31. Denies the allegations contained in paragraph 32 of the Plaintiff's Complaint.

32. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 34 of the Plaintiff's Complaint.

33. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 35 of the Plaintiff's Complaint.

34. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 36 of the Plaintiff's Complaint.

35. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 37 of the Plaintiff's Complaint.

36. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 38 of the Plaintiff's Complaint.

37. Lacks information sufficient to formulate a response with respect to the allegations contained in paragraph 39 of the Plaintiff's Complaint.

38. Admits the allegations contained in paragraph 40 of the Plaintiff's Complaint.

39. Denies the allegations contained in paragraph 41 of the Plaintiff's Complaint.

40. Denies the allegations contained in paragraph 42 of the Plaintiff's Complaint.

41. Denies the allegations contained in paragraph 43 of the Plaintiff's Complaint.

42. Denies the allegations contained in paragraph 44 of the Plaintiff's Complaint.

43. Denies each and every other allegation not heretofore admitted or denied.

AS AND FOR A FIRST COUNTERCLAIM AGAINST THE PLAINTIFF MARYLAND CASUALTY COMPANY

44. That this is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 *et seq.* and Rule 57 of the Federal Rules of Civil Procedure.

45. That at all times hereinafter mentioned, the Defendant Dale Dahlgren was and is a resident of the County of Erie and State of New York.

46. That upon information and belief, at all times hereinafter mentioned, the Plaintiff Maryland Casualty Company was and still is a foreign corporation duly authorized to engage in the business of liability and hazard insurance within the State of New York.

47. That upon information and belief, at all times hereinafter mentioned, the Defendant Efficient Solutions, Inc. was and still is a domestic corporation duly existing by virtue of the laws of the State of New York with a

principal place of business located at 48 Oak Hill Drive, Hamburg, New York 14075.

48. That diversity jurisdiction under 28 U.S.C. § 1332(a) exists in that the action is between citizens of different states and the matter in controversy exceeds the sum of $75,000.00.

49. That venue is proper in the Western District of New York pursuant to 28 U.S.C. § 1391(a) in that the Defendant Efficient Solutions, Inc.'s principal place of business is located within the Western District of New York and the events and/or omissions giving rise to the claim occurred within the Western District of New York.

50. That upon information and belief, that on or prior to the 26th day of June 2008, the Plaintiff issued to the Defendant Efficient Solutions, Inc. an insurance policy, Policy No. PAS1141565, which was effective between the dates of August 28, 2007 and August 28, 2008 (hereinafter, the Policy).

51. That upon information and belief, the aforesaid Policy contained commercial general liability primary coverage and commercial umbrella coverage.

52. That upon information and belief, the aforesaid insurance policies were in full force and effect on the 26th day of June 2008.

53. That upon information and belief, on or prior to the 26th day of June 2008, the Defendant Efficient Solutions, Inc. was hired by Thomas Quinn to provide and perform certain construction work, labor and services at the

premises owned by Thomas Quinn location at 120 Woodcrest Drive in the City of Buffalo, County of Erie and State of New York.

54. That upon information and belief, on or prior to the 26th day of June 2008, the Defendant Efficient Solutions, Inc. retained a sole proprietorship known as Stock General Contracting to perform all of the construction work, labor or services at the premises owned by Thomas Quinn at 120 Woodcrest Drive in the City of Buffalo, County of Erie and State of New York.

55. That upon information and belief, Stock General Contracting was an uninsured subcontractor as that term is applied in accordance with § 56 of the New York State Workers' Compensation Law.

56. That on or about the 26th day of June 2008, Defendant Dale Dahlgren was employed by Stock General Contracting.

57. That on or about the 26th day of June 2008, Defendant Dale Dahlgren sustained injuries as a result of a fall while working at the premises at 120 Woodcrest Drive in the City of Buffalo, County of Erie and State of New York.

58. That after Defendant Dale Dahlgren sustained his injuries, he applied for and was granted Workers' Compensation coverage through the Defendant Efficient Solutions, Inc.'s Workers' Compensation carrier, the New York State Insurance Fund.

59. That upon information and belief, Workers' Compensation benefits were paid to Defendant Dale Dahlgren under the Workers'

Compensation policy of Defendant Efficient Solutions, Inc. Up until the later half of 2009, all decisions and correspondences which were rendered by the State of New York Workers' Compensation Board with respect to the claim of Defendant Dale Dahlgren listed the Defendant Efficient Solutions, Inc. as the employer of Defendant Dale Dahlgren.

60. Once it was determined that Defendant Efficient Solutions, Inc. was not the employer of Defendant Dale Dahlgren, a Summons and Complaint was filed on or about September 24, 2009, and served upon Defendant Efficient Solutions, Inc., asserting claims for personal injuries.

61. That upon information and belief, Plaintiff has denied coverage for Dale Dahlgren's claim based on the alleged failure of its insured, the Defendant Efficient Solutions, Inc., to timely report the occurrence as soon as practicable.

62. The denial of coverage by the Plaintiff is wrongful and in violation of the terms and conditions of its policy with the Defendant Efficient Solutions, Inc.

63. That upon information and belief, there is an actual controversy existing between the Plaintiff and the Defendant Efficient Solutions, Inc. and more particularly as to the obligation of the Plaintiff to the Defendant Efficient Solutions, Inc. under the insurance policies which are the subject of the within action.

64. That the Defendant Dale Dahlgren requires and requests a declaration of Defendant Efficient Solution, Inc.'s rights and a declaration of the

obligation of the Plaintiff under said insurance policies and in accordance with the applicable provisions of law relating to declaratory judgments.

65. That the Defendant Dale Dahlgren is entitled to a declaration that there is coverage under the insurance policies issued by the Plaintiff to the Defendant Efficient Solutions, Inc. for any claims he asserts against Defendant Efficient Solutions, Inc. in his personal injury action.

WHEREFORE, the Defendant Dale Dahlgren respectfully requests that judgment be entered:

1) Denying the Plaintiff's Complaint, together with the costs and disbursements of the within action;
2) Declaring that the denial of coverage by the Plaintiff was improper and wrong;
3) Declaring that there is coverage under the policies referred to in the Complaint for Defendant Efficient Solutions, Inc. for any claims against it in the action entitled ***Dale Dahlgren vs. Efficient Solutions, Inc. and Thomas Quinn***;
4) For such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this action, including reasonable attorney's fees.

Dated: Buffalo, New York
May 25, 2010

/s/ Ellen B. Sturm

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